



**Office of Audits
Office of Inspector General
U.S. General Services Administration**

**PBS Did Not Follow Internal Guidance for
Congressional Notification and Violated
Competition Requirements When
Supplementing Funding of Recovery
Act Projects**

*Report Number A120111/P/R/R14001
March 17, 2014*



Office of Audits
Office of Inspector General
U.S. General Services Administration

REPORT ABSTRACT

OBJECTIVE

Our objective was to determine whether the Public Buildings Service (PBS) supplemented the funding of the American Recovery and Reinvestment Act of 2009 (Recovery Act) projects with non-Recovery Act funds. If so, determine if the funds were used in compliance with applicable laws, regulations, and policies.

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PBS Did Not Follow Internal Guidance for Congressional Notification and Violated Competition Requirements When Supplementing Funding of Recovery Act Projects

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WHAT WE FOUND

We identified the following during our audit:

Finding 1 – PBS supplemented Recovery Act projects with non-Recovery Act funds without notifying Congress.

Finding 2 – PBS awarded Recovery Act contract modifications in violation of competition requirements.

WHAT WE RECOMMEND

Based on our audit findings, we recommend that the PBS Commissioner:

1. Notify Congress of the use of Minor Repairs and Alterations funds to supplement Recovery Act projects.
2. Perform an internal review to identify Recovery Act projects that were supplemented with non-Recovery Act funds without Congressional notification. Notify Congress of any additional projects with supplemental funding.
3. Ensure that changes outside the scope of the contract are handled in accordance with Federal Acquisition Regulation Part 6.

MANAGEMENT COMMENTS

The PBS Commissioner concurred with the recommendations. Management's written comments to the draft report are included as **Appendix C**.



**Office of Audits
Office of Inspector General
U.S. General Services Administration**

DATE: March 17, 2014

TO: Norman S. Dong
Commissioner
Public Buildings Service (P)

FROM: Susan P. Hall *Susan P. Hall*
Audit Manager
Real Property Audit Office (JA-R)

SUBJECT: PBS Did Not Follow Internal Guidance for Congressional Notification
and Violated Competition Requirements When Supplementing
Funding of Recovery Act Projects
Report Number A120111/P/R/R14001

This report presents the results of our audit entitled PBS Did Not Follow Internal Guidance for Congressional Notification and Violated Competition Requirements When Supplementing Funding of Recovery Act Projects. Our findings and recommendations are summarized in the Report Abstract. Instructions regarding the audit resolution process can be found in the email that transmitted this report.

Your written comments to the draft report are included in **Appendix C** of this report.

If you have any questions regarding this report, please contact me or any member of the audit team at the following:

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On behalf of the audit team, I would like to thank you and your staff for your assistance during this audit.

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Introduction

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provided the General Services Administration (GSA) with \$5.55 billion for the Federal Buildings Fund. In accordance with the Recovery Act, the GSA Public Buildings Service (PBS) is using the funds to convert federal buildings into High-Performance Green Buildings, as well as to construct federal buildings, courthouses, and land ports of entry.

The GSA Office of Inspector General (OIG) is conducting oversight of the projects funded by the Recovery Act. As a part of this effort, the OIG reviewed modernization projects funded by the Recovery Act for instances where PBS supplemented said projects with non-Recovery Act funding. These projects consisted of full and partial building modernizations that included the replacement of mechanical, electrical, and plumbing systems; fire and life safety systems; interior and exterior finishes, etc. This report documents reportable conditions in the Northeast and Caribbean, Mid-Atlantic, Great Lakes, Rocky Mountain, and Pacific Rim Regions.

The objective of our audit was to determine whether PBS supplemented the funding of Recovery Act projects with non-Recovery Act funds. If so, determine if the funds were used in compliance with applicable laws, regulations, and policies.

See ***Appendix A*** – Purpose, Scope, and Methodology for additional details.

Results

Finding 1 – PBS supplemented Recovery Act projects with non-Recovery Act funds without notifying Congress.

PBS did not follow its internal guidance to notify Congress when it supplemented Recovery Act projects with non-Recovery Act Minor Repairs and Alterations (Minor R&A) funds.

Minor R&A funds,¹ part of PBS's Capital Program, are generally used to fund projects below the prospectus limit.² They are necessary to keep GSA's building inventory in a proper state of repair to protect the building's value, contribute to its income-producing potential, and ensure the continuity of client missions. If the funds are used for another purpose, Congress should be notified.

As part of its Recovery Act implementation, PBS issued "Guidance on use of BA54 funds on ARRA (Recovery Act) projects" to clarify how Minor R&A funds could be used in combination with Recovery Act funding. This policy states that "if the BA03 funding exceeds the prospectus threshold and BA54 funding is also planned for the same scope, Congressional notification is also recommended."³ Therefore, PBS should have notified Congress of the Recovery Act projects that used Minor R&A funds for the same scope as recommended by this policy. However, PBS supplemented Recovery Act funds with Minor R&A funds on several prospectus-level projects without reporting it to Congress. Below are three examples:⁴

- The John C. Kluczynski Federal Building and U.S. Loop Post Office Facility project included modification PS17 for \$950,000 in Minor R&A funds. The work was primarily for fire proofing repairs and fire stopping perimeter columns. When the contractor opened the walls to perform its work, it determined that the fire proofing was in need of repairs to meet building code. This work was an unforeseen site condition of the Recovery Act project.
- The New Custom House Federal Office Building, modification PS08, used \$2.6 million in Minor R&A funds for historical improvements. The historical improvements included the addition of first floor transoms, higher ceilings in the public areas, historical lighting, and lay-in light fixtures. Since the Recovery Act scope of work included upgrades to lighting and historic preservation, this modification is considered within the scope of the project.

¹ Minor R&A funds use Budget Activity (BA) 54.

² The prospectus limit is the dollar threshold (\$2.79 million for fiscal year 2013) above which a project requires Congressional approval.

³ BA03 is a Recovery Act (also referred to as ARRA) Budget Activity fund code for High-Performance Green Buildings (Modernization and Limited Scope) projects.

⁴ Additional projects and modifications are discussed in **Appendix B**.

- The Richard H. Poff Federal Building modernization project used \$875,000 in Minor R&A funds, via modification PC13, for a unified fire alarm system. The Recovery Act project's FedBizOpps contract synopsis and Project Management Plan cited the fire alarm system. Cost estimates prepared by the Architect/Engineer and Construction Manager as Agent also included the fire alarm system under Construction Option 3. Therefore, the fire alarm system was within the scope of the project.

PBS regional officials informed us that they did not notify Congress about the use of Minor R&A funds on these projects because they did not believe such notification was required.

While we do not question the legitimacy of the work performed on the Recovery Act projects using Minor R&A funds, the use of these funds lacks transparency with regard to the actual cost of the projects as well as how PBS is using its Minor R&A funds. Further, by using these funds to supplement Recovery Act projects, PBS reduces the funding available for its normal improvement, maintenance, and repair of its building inventory.

Recommendation 1

The PBS Commissioner should notify Congress of the use of Minor Repairs and Alterations funds to supplement Recovery Act projects.

Management Comments

In its comments, management agreed with the audit finding and concurred with the recommendation (See **Appendix C**).

Recommendation 2

The PBS Commissioner should perform an internal review to identify Recovery Act projects that were supplemented with non-Recovery Act funding without Congressional notification. Additionally, the PBS Commissioner should notify Congress of any additional projects with supplemental funding.

Management Comments

In its comments, management agreed with the audit finding and concurred with the recommendation (See **Appendix C**).

Finding 2 – PBS awarded Recovery Act contract modifications in violation of competition requirements.

PBS's modifications for child care center renovations at the Cesar E. Chavez Memorial Building (Chavez) violated competition requirements. The Federal Acquisition

Regulation (FAR) allows changes that are “within the general scope of the contract.” The Chavez Recovery Act project’s general scope included a parking garage replacement; first and second floor renovations; elevator and lobby upgrades; swing space; building skin replacement; ceiling replacement; roof and penthouse improvements; condenser and chilled water, mechanical, electrical, and plumbing, and Leadership in Energy and Environmental Design upgrades; photovoltaic panels; and Recovery Act performance upgrades. According to the request for proposals, the “first and second floor renovation” included some design and construction work for the child care center. However, the child care center work associated with the Chavez Recovery Act contract was limited to external work (e.g., emergency exit, replacement of building skin).

The subsequent contract modifications involved a complete redesign of the interior of the existing 3,260 square foot child care center, and the addition of 2,250 square feet “to provide additional space for proper circulation, play and quiet area, and staff areas.” The modifications increased the type and nature of the work and could not have been reasonably anticipated by the offerors. As such, the modifications are outside the scope of the contract and the contracting officer had no authority to order the work under FAR 52.243-4 Changes.⁵

The award of the child care center modifications to the Recovery Act contractor does not meet the requirements of FAR 6.3 – Other than Full and Open Competition. FAR 6.3 contains several requirements for procurements not conducted through full and open competition. Prior to starting negotiations for a sole source contract, contracting officers must justify the action in writing and obtain proper approval.

FAR 6.303 requires that each justification include sufficient facts and rationale. The FAR lists 12 requirements in every sole source justification, including, but not limited to: identification of the statutory authority permitting other than full and open competition (*i.e.*, the “other than full and open” circumstances listed in FAR 6.302), a demonstration that the proposed contractor has unique qualifications, a description of efforts made to ensure that offers are solicited from as many potential sources as practical, and a determination that the anticipated cost will be fair and reasonable.

The Chavez contract file had limited information concerning the sole source justification. PBS failed to cite the statutory authority permitting “other than full and open” competition for the child care center renovation project. Rather, the contract file contained a memorandum indicating it was in the best interest of the Government to award the child care center renovation project to the modernization contractor to eliminate any conflicts that may be encountered if there were multiple contractors working in the same area. It also stated that the contractor was already mobilized and PBS would realize savings by not paying additional overhead and mobilization fees.

⁵ FAR 52.243-4 Changes states “the Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract.” Thus, if the work is not within the general scope of the contract, the contracting officer does not have authority under the Changes clause to make changes.

Although the contract file documented the contracting officer's fair and reasonable price determination, it did not address the other factors/information required under FAR 6.303. The project team informed us that a sole source justification was not completed.

Additionally, the award of the child care center renovation modifications lacked the proper approvals. Approval authority varies as the value of the contract increases. According to FAR 6.304(a)(1), the contracting officer may not approve sole source awards exceeding \$650,000. For a proposed contract over \$650,000, but not exceeding \$12.5 million, "a competition advocate for the procuring activity" must approve the justification. FAR 6.304(d) requires that agencies include the estimated dollar value of all options when determining the approval level of a justification. Modifications PS02 and PS21, totaling \$697,048, were for child care center renovations. Modification PS02 was awarded for \$515,151 to establish the base contract and options for an exterior play surface, millwork, and flooring. Modification PS21 awarded all of the options for \$181,897. Since the sole source award (inclusive of options) was above \$650,000, the justification (which was never completed) needed to be approved by a competition advocate.

Recommendation 3

The PBS Commissioner should ensure that changes outside the scope of the contract are handled in accordance with FAR Part 6.

Management Comments

In its comments, management agreed with the audit finding and concurred with the recommendation (See **Appendix C**).

Conclusion

The audit identified two deficiencies: PBS supplemented Recovery Act projects with non-Recovery Act funds without notifying Congress and PBS awarded contract modifications in violation of competition requirements. The PBS Commissioner should: (1) notify Congress of the use of Minor R&A funds to supplement Recovery Act projects; (2) perform an internal review to identify Recovery Act projects that were supplemented with non-Recovery Act funding without Congressional notification; and (3) ensure that changes outside the scope of the contract are handled in accordance with FAR Part 6.

Appendix A – Purpose, Scope, and Methodology

Purpose

The GSA OIG identified examples of PBS supplementing Recovery Act projects with non-Recovery Act funds during the *Audit of PBS's Major Construction and Modernization Projects Funded by the American Recovery and Reinvestment Act of 2009*. Two projects contained occurrences of supplemental funding.⁶ We initiated a separate audit focusing on supplemental funding of Recovery Act modernization projects based on these findings.

Scope

Our audit focused on ten prospectus-level projects located within the Northeast and Caribbean, Mid-Atlantic, Great Lakes, Rocky Mountain, and Pacific Rim Regions. We selected our audit sample through data analysis of all Recovery Act Modernization Projects using the Financial Management Information System and the Federal Procurement Data System - Next Generation. This analysis identified Recovery Act projects with non-Recovery Act funded contract modifications. Our audit sample was judgmentally selected from this population.

Methodology

To accomplish our objectives, we:

- Performed fieldwork in the Northeast and Caribbean, Mid-Atlantic, Great Lakes, Rocky Mountain, and Pacific Rim Regions;
- Interviewed GSA contracting and project staff;
- Reviewed and analyzed contract files for the ten projects in our audit sample; and
- Reviewed applicable guidance and regulations.

We conducted the audit between July 2012 and February 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

⁶ *Recovery Act Report – Funding for Modifications 50 UN Plaza Renovation Project, Audit of PBS's Major Construction and Modernization Projects Funded by the American Recovery and Reinvestment Act of 2009*, Report Number A090172/P/R/R13003, March 27, 2013.

Recovery Act Report – Improper Obligation of Construction Funds for the 1800 F Street Modernization Project, Audit of PBS's Major Construction and Modernization Projects Funded by the American Recovery and Reinvestment Act of 2009, Report Number A090172/P/R/R12006, March 30, 2012.

Internal Controls

As this work was performed under the continuing oversight of all GSA Recovery Act projects, management controls are currently under assessment. Only those management controls discussed in the report have been assessed.

Appendix B – Additional Finding 1 Modifications

Finding 1 – PBS supplemented Recovery Act projects with non-Recovery Act funds without notifying Congress.

Bishop Henry Whipple Federal Building

Modification PS16 for \$2,000,000 – This modification was for mechanical, electrical, and plumbing (MEP) maintenance. MEP work was not included in the original Recovery Act scope of work since the building was to be vacant during construction and MEP systems turned off. After award of the Recovery Act project a tenant decided to remain in the building during construction, which resulted in the need for the MEP systems to be functioning and maintained.

Cesar E. Chavez Memorial Building

Modification PO01 for \$4,575,486 – This modification used Minor R&A funds in the amount of \$783,931 for the demolition and replacement of the fire alarm system. The fire alarm system was included in the original request for offers as an option. The option was awarded shortly after the base contract. The fire alarm system was part of the original scope as this work was included in the initial request, the price was negotiated along with the base contract, and PBS intended to perform the work from the start of the project.

Modification PS45 for \$139,923 – This modification used Minor R&A funds for exterior site work to meet First Impression Program requirements and Interagency Security Committee Standards. Modification PS04, which established the scope of work, was funded by the Recovery Act. The price reasonableness determination for modification PS45 stated that the amount of \$139,923 covers the delta between modification PS04 of \$509,000 and the Independent Government Estimate of \$600,912.

Modification PS57 for \$1,034,000 – This modification used Minor R&A funds for tenant build-out that involved the installation of ceiling grid and tile. This modification is within scope since it is consistent with the work performed under the base contract option 5, which included ceiling replacement.

Chicago Federal Center

Modification PS46 for \$379,651 – This modification was awarded for the installation of three guardhouses. Guardhouses were included in the initial competition for the Recovery Act project. However, due to budget limitations, the GSA project team de-scoped the guardhouses and used the funding for design errors and omissions. GSA Asset Management then decided to fund the installation of the three guardhouses with Minor R&A funds since the guardhouses were a priority.

Huntington Federal Building

Modification PC14 for \$2,046,237 – This modification used Minor R&A funds for awarding multiple line items, including: utility relocation, pavement repairs, patch replacement of ceiling and carpet tiles, heating ventilation and air conditioning removal, asbestos abatement, basement build-out, and fire alarm replacement. This work is within scope since all of the work except the fire alarm replacement was referenced in the Recovery Act project's contract synopsis or request for proposals. Typically, fire and life safety systems are evaluated during project planning and incorporated into modernization projects. The need for the fire alarm replacement system was identified prior to the Recovery Act project but was not included in the Recovery Act project's scope of work.

John C. Kluczynski Federal Building & U.S. Loop Post Office Facility

Modification PS51 for \$364,495 – This modification was awarded for the fire pump scope of work included in the Recovery Act project at the time of award. As the project progressed, this work was de-scoped from the Recovery Act scope of work in order to fund other changes. GSA Asset Management wanted this scope of work included in the project so Minor R&A funds were provided for the fire pump replacement. Modification PS51 de-scoped Recovery Act work and obligated Minor R&A funds for the same work.

Prince Jonah Kuhio Kalaniana'ole U.S. Courthouse

Modification PS12 for \$650,000 – This modification was for labor, materials, equipment, and supervision to demolish an existing snack shop and rebuild a permanent snack shop. According to the contracting officer, the location of the current snack shop was to be used as a temporary security checkpoint during the construction of the new security pavilion. The plan was to close the snack shop during construction. Once the project was under construction, regional personnel determined that it was unacceptable to close the snack shop. Minor R&A funds were used to permanently move the snack shop. The Findings of Fact for Contract Modification for PS12 notes this as an unforeseen/differing condition within the scope of work.

Richard H. Poff Federal Building

Modification PC09 for \$51,840 – This project used Minor R&A funding to increase the floor load capacity for floors 6 through 13. The contracting officer stated the full scope of this work became known after the project was started. Minor R&A funding was used so the floor load capacity problem could be corrected. The contract synopsis notes, "The proposed capital project will correct structural and systems deficiencies in the 34-year old building." While an

unforeseen site condition at the time of project initiation, this work is within the scope of the Recovery Act project.

Modification PC12 for \$200,000 – This modification used Minor R&A funds to install upgrades to improve the safety and performance of the elevators. This work was not included in the Recovery Act contract awarded November 6, 2009. Based on numerous tenant complaints, PBS had an elevator study performed in June 2011, which identified the needed repairs. The contract synopsis notes, “The proposed capital project will correct structural and systems deficiencies in the 34-year old building.”

Nazario Courthouse and Degetau Federal Office Building

Modification PS02 for \$39,428 and modification PO04 for \$197,660 (total amount \$237,088) – These modifications used Minor R&A funds for additional Construction Management services for a new courtroom and ancillary spaces in the Toledo Courthouse, which was to be used as swing space for the Nazario and Degetau project. The new courtroom and ancillary spaces were a line item in the Bridging/Design/Build contractor’s base contract. The contracting officer stated that “The Toledo Swing Space Courtrooms were necessary to complete The Project [*Nazario and Degetau*]. Without the Toledo Swing Space Courtrooms, the Nazario Courthouse could not be renovated, therefore, this was one project.” These two modifications were essential to the completion of the Recovery Act modernization project.

Appendix C – Management Comments



GSA Public Buildings Service

MAR 04 2014

MEMORANDUM FOR R. NICHOLAS GOCO
DEPUTY ASSISTANT INSPECTOR GENERAL FOR REAL
PROPERTY AUDITS (JA-R)

FROM: DOROTHY ROBYN *Dorothy Robyn*
COMMISSIONER (P)
PUBLIC BUILDINGS SERVICE

SUBJECT: PBS Did Not Follow Internal Guidance for Congressional Office
of Inspector General (OIG) Draft Report Notification and
Violated Competition Requirements When Supplementing
Funding of Recovery Act Projects (A120111-2)

The Public Buildings Service (PBS) appreciates the opportunity to comment on the draft report and concurs with its findings and recommendations. The report recommends that the PBS Commissioner:

1. Notify Congress of the use of minor repairs and alterations funds (BA54) to supplement Recovery Act projects.
2. Perform an internal review to identify Recovery Act projects that PBS supplemented with non-Recovery Act funds without congressional notification and notify Congress of any additional projects with supplemental funding.
3. Ensure that changes outside the scope of the contract are handled in accordance with Federal Acquisition Regulation Part 6.

In response to recommendations 1 and 2, the PBS Office of Design and Construction will perform an internal review to identify Recovery Act projects that PBS supplemented with BA54 funds without congressional notification, and will report all such instances of non-Recovery Act expenditures in the next PBS Recovery Spend Plan. In response to recommendation 3, the PBS Office of Acquisition Management will issue a reminder regarding the requirements of the Federal Acquisition Regulation Part 6.

Should you or your staff have questions, please contact Matt Radford, Director of Program Management, Office of Design and Construction, at (202) 219-0906.

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Appendix D – Report Distribution

PBS Commissioner (P)

PBS Deputy Commissioner (PD)

PBS Chief of Staff (P)

Regional Recovery Executive (2PC, 3PR, 5PN, 8PC, 9P2PT)

National Program Office ARRA Executive (PCB)

Senior Accountable Official for Recovery Act Reports (PCBJ)

Chief of Staff, PBS Office of Construction Programs (PCB)

Regional Administrator (2A, 3A, 5A, 8A, 9A)

Regional Commissioner (3P, 5P, 9P)

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